

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

IN RE LETTER OF REQUEST )  
FROM RUSSIA )  
IN THE MATTER OF ) Misc. No. 07-  
FROBISTER INVEST AND TRADE, LTD.)

**GOVERNMENT'S MEMORANDUM OF LAW  
IN SUPPORT OF APPLICATION FOR ORDER**

This memorandum of law is submitted in support of the Application for an Order pursuant to Title 28, United States Code, Section 1782, in order to execute a letter of request from Russia. A copy of the translation is attached.

**FACTUAL BACKGROUND:**

This investigation is being conducted by the Russian authorities who are investigating a case of alleged theft of property.

**EVIDENCE SOUGHT:**

The Russian authorities seek information about a company that may reside in this District and the Delaware Secretary of State's Office. The authority for this Court to accede to this request is contained in Title 28, United States Code, Section 1782, which states in part:

- (a) The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the

testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

The proper criteria for determining whether the court should exercise its discretion in favor of executing the request are outlined in In Re Request for Judicial Assistance from the Seoul District Criminal Court, 555 F.2d 720, 723 (9th Cir. 1977) (citation omitted):

Under the statute the only restrictions explicitly stated are that the request be made by a foreign or international tribunal, and that the testimony or material requested be for use in a proceeding in such a tribunal.... [and] that the investigation in connection with which the request is made must relate to a judicial or quasi-judicial controversy.

Moreover, " (t)he judicial proceeding for which assistance is sought ... need not be pending at the time of the request for assistance; it suffices that the proceeding in the foreign tribunal and its contours be in reasonable contemplation when the request is made." In Re Letter of Request from the Crown Prosecution Services of the United Kingdom, 870 F.2d 686, 687 (D.C. Cir. 1989).

The letter of request in this case shows that the

information sought is for use in such proceedings in Russia and hence the request comes well within those circumstances contemplated by Congress in expanding the Federal Courts' authority to act in such matters. In Re Letter of Request from the Crown Prosecution Service of the United Kingdom, 870 F.2d 686, 689-91 (D.C. Cir. 1989); In Re Letters Rogatory from the Tokyo District, Tokyo, Japan, 539 F.2d 1216, 1219 (9th Cir. 1976). Therefore, I ask this Court to honor the request for assistance.

The reception of letters of request and the appointment of a Commissioner to execute them are matters customarily handled ex parte, and persons with objections to the request raise those objections by moving to quash any subpoenas issued by the Commissioner. *Id.*

**WHEREFORE**, the United States requests that the Court issue an Order, in the form, appended hereto, appointing a Commissioner in order to execute the request for assistance.

Respectfully submitted,

COLM F. CONNOLLY  
United States Attorney

BY:

  
David L. Hall  
Assistant U.S. Attorney  
1007 N. Orange Street  
Wilmington, DE 19801  
(302) 573-6277

Dated: 3/13/07

**Prosecutor General's Office  
of the Russian Federation**

15A Bolshaya Dmitrovka  
Moscow, GSP-3, 125993, Russia

*18* .09.2006 Our ref. 35/2-2344-06  
Your ref.: \_\_\_\_\_

**Ms. Mary Ellen Warlow  
Director  
Office of International Affairs  
US Department of Justice**

1301 New York Ave. NW  
Washington, D.C. 20005

Dear Ms. Warlow,

The Prosecutor General's Office of the Russian Federation presents its compliments to the Department of Justice of the United States of America and has to inform you that pursuant to the Treaty on Mutual Legal Assistance in Criminal Matters of 06/17/99 we have the honour to request legal assistance in criminal case No. 380025, instituted under art.160, part 4 (appropriation or misapplication) of the Criminal Code of the Russian Federation.

The performance of the investigative actions in the territory of the United States of America is necessary in order to ensure preliminary inquiry.

Please be advised that procedural criminal law of the Russian Federation envisages limited terms of the prejudicial investigation in criminal matters. Procedural terms violation may adversely affect the results of criminal investigation and bringing to justice the accused.

In view of the above, please take all necessary measures to execute the above-mentioned request as soon as possible prior to 01.01.2007 and forward the results, or inform of the reasons why it cannot be executed, to Main Department for International Legal Cooperation, Prosecutor General's Office of the Russian Federation.

The Prosecutor General's Office of the Russian Federation guarantees that the information and documents obtained in the course of execution of the request will be used for the purposes of the investigation only and will not cause any harm to the sovereignty, security and public order of the United States of America.

The Prosecutor General's Office of the Russian Federation thanks you in advance for your cooperation and confirms its readiness to provide similar or other kind of legal assistance in criminal matters to the law-enforcement agencies of the United States of America.

Enclosure: 18 pages

Head

Main Department for International Legal Cooperation

A.S. Kupriyanov



*M. Kouznetsova*

BEAUREU OF FEDERAL SECURITY SERVICE OF THE RUSSIAN  
FEDERATION  
FOR SAINT-PETERSBURG AND LENINGRADSKIY REGION

Copy # 1

21 April 2006. №

Saint-Petersburg

To the Competent Agencies of the USA

**INQUIRY**

On the Legal Assistance for Criminal Case N380025

Looking forward for further cooperation and ruled by the stipulations of Agreement on Mutual Legal Assistance for Criminal Cases between the Russian Federation and the United States of America from June 17, 1999, we ask for Your assistance in investigation of criminal case N 380025, exited by the Federal Security Service Agencies of the Russian Federation on the fact of stealage of diamonds to the amount of US\$ 1 million 800 thousands in extremely gross dimension by way of appropriation from the "Avrora Diamant Spb" Closed Joint-Stock Company (Saint-Petersburg, Russia), i.e. the crime provided for by the Article 160 part 4 of the Criminal Code of the Russian Federation.

The investigation of criminal case does not follow any political objectives.

The following is established in the curse of investigation of this case:

On February 16, 2004 there was signed the contract N ADF-07 09 between the "Avrora Diamant Spb" CJ-SC and "Forbister Invest & Trade Ltd" (Hungary, ID No. 2558906, H-19, 33/A Radai str., Budapest). According to this contract, the "Avrora Diamant Spb" CJ-SC was obliged to export 908.82 carat of diamonds to "Forbister Invest & Trade Ltd" to the amount of US\$1 800 000 with the 90 days delay of payment.

After the "Avrora Diamant Spb" CJ-SC had drawn all necessary banking documents and passed customs procedures, the lot of diamonds, for the purpose of further transportation to the address of "Forbister Invest & Trade Ltd." was handed over to Gritsay Sergey Ivanovich, born on February 1, 1962 in Korenovsk city of Krasnodarskiy region, and he should deliver the lot of diamonds to Hungary in March 2004.

However, as it follows from the materials of the criminal case, later Gritsaev used the diamonds for his private profit. They were given to credit coimpany as the deposit for receiving the credit in the amount US\$ 800 000, which he misappropriated later.

To present day the "Avrora Diamant Spb" CJ-SC has not received the monetary means from "Forbister Invest & Trade Ltd" for the sale of diamonds, and Gritsaev has not returned the diamonds.

According to the information in the materials of the criminal case, the "Forbister Invest & Trade Ltd" company was registered in Delaware (the USA) on November 17, 1995, on which the certificate on the establishment of a legal entity - the corporation "Forbister Invest & Trade Ltd" was drawn. However, since December 15, 1998 on the basis of the decision of Harriet Smith Windsor the State Secretary of Delaware, the "Forbister Invest & Trade Ltd" company ceased to

exist and discontinued to be the company, which is registered appropriately according to the legislation of the State of Delaware. It had lost his status due to refusal to have up and assign the registered agent.

In connection with the abovestated we ask You to place to the disposal of Investigative agencies of the Russian Federation the information on the following:

1. To establish whether the "Forbister Invest & Trade Ltd" company is registered appropriately according to the legislation of Delaware State (the USA). If it is, to inform when it was registered, who is its founder and head and whether it realises the economical activity. In case of positive answers, we ask You to send the attested copies of establishing documents of the "Forbister Invest & Trade Ltd" company.
2. To receive the samples of press of the stamp of "Forbister Invest & Trade Ltd".
3. To establish whether the activity of the "Forbister Invest & Trade Ltd" company is ceased. In case of positive answer send us, please the attested copy of the appropriate decision.

If You receive any additional information not reflected in this inquiry and in case of necessity for more complete execution of the inquiry given, You may ask to submit additional documents.

We thank You in advance for cooperation and assure in our readiness to execute the similar inquiries on legal assistance in the territory of the Russian Federation on the basis of reciprocity and by the inquiry of American part.

The appendices:

- An extract from the Article 160 part 4 of the Criminal Case of the Russian Federation on 1 page.
- The determination on the receiving of the samples of press of the stamp of "Forbister Invest & Trade Ltd" for comparative research from July 12, 2006 on 1 page.
- The copies of the materials of the criminal case No. 380025 on 5 pages.

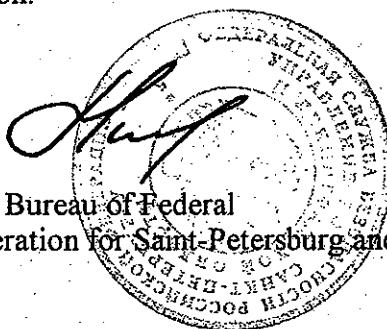
Total number of appendices is 7 pages.

Thank You in advance for cooperation.

Sincerely Yours,

Miloushkin M.Yu.

Chief of Investigative Service of the Bureau of Federal Security Service of the Russian Federation for Saint-Petersburg and Leningradskiy region



EXTRACT

From the Criminal Code of the Russian Federation

**Article 160. Appropriation or Misapplication**

(in reduction of Federal Law No. 162- ФЗ from 08.12.03)

1. The appropriation or misapplication of other's property entrusted with to the guilty person, -

Is punished with the penalty in the amount up to one hundred twenty thousands roubles or in the amount of salary or other income of the convicted for the period up to one year; or with the obligatory works for the period up to one hundred and twenty hours; or correctional works for the period of up to six months; or with the imprisonment for the period up to two years.

4. The act provided for in part 1 of this Article committed by the organized group or in extremely gross dimensions,-

Is punished with imprisonment for the period from five to ten years with payment of penalty in the amount up to one million roubles or in the amount of salary or other income of the convicted for the period up to three years, or without such.

The Extract is authentic:

Zavershinskiy D.A.

Chief Investigator for Internal Affairs Department of the  
Investigative Service of BFSS of Russia for  
Saint-Petersburg and Leningradskiy region

Lieutenant Colonel

**DETERMINATION**

On receiving of the samples for comparative research

Saint-Petersburg

(place of drawing)

July 12, 2006

Investigator (inquirer) Chief Investigator for Internal Affairs Department of the Investigative  
 (name of the agency for preliminary investigation or

Service of BFSS of Russia for Saint-Petersburg and Leningradskiy region,  
 inquiry; the class or the rank, surname and

Zavershinskiy D.A., lieutenant colonel

initials of investigator (inquirer)

Having examined the materials of the criminal case No. 380025

**ESTABLISHED:**

Connected with the assigning of criminalistical expertise on the criminal case, it has appeared the necessity to receive the samples of press of the stamp of the "Forbister Invest & Trade Ltd" company (Hungary).

On the basis of abovementioned and ruled by the Article 202 of the Criminal Procedural Code of the Russian Federation,

**DETERMINED:**

Receive the samples of press of the stamp of the "Forbister Invest & Trade Ltd" company  
 (what exactly)

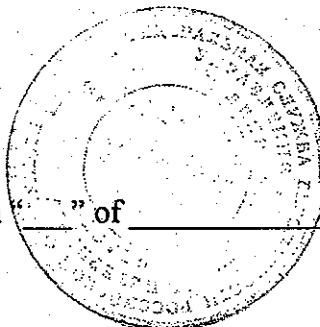
from the director general of the "Forbister Invest & Trade Ltd" company  
 (procedural status, surnames, names and father names of

the participants of criminal proceedings)

Investigator (inquirer)

\_\_\_\_\_ (signature)

I am announced this determination on "    " of   , 2006



\_\_\_\_\_ (signature of person, who  
should give out the samples)

# Delaware

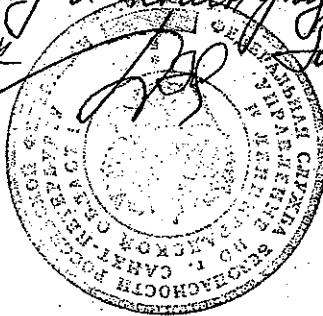
**КОПИЯ**

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF RESIGNATION OF REGISTERED AGENT WITHOUT APPOINTMENT OF "FROBISTER INVEST & TRADE LTD." FILED IN THIS OFFICE ON THE FIFTH DAY OF NOVEMBER, A.D. 1998, AT 9 O'CLOCK A.M.

Копия верна:  
 Аварийный спасательный по ОЗА  
 Спасательный спускотяг ЧФР России по  
 Северо-Ледовитому и Арктическому океанам  
 моряков-спасателей  
 Гавриловский Д.Н.



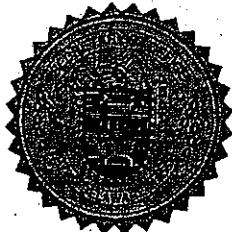
Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4568135

DATE: 03-06-06

2558906 8100R



060151951

Translation of copy certification:

**COPY**

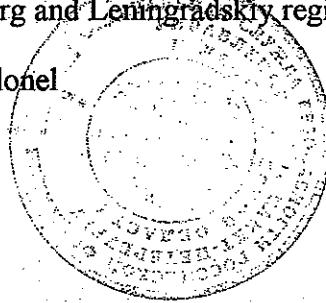
---

The Extract is authentic:

**Zavershinskiy D.A.**

Chief Investigator for Internal Affairs Department of the  
Investigative Service of BESS of Russia for  
Saint-Petersburg and Leningradskiy region

Lieutenant Colonel



# Delaware

КОПИЯ

PAGE 1

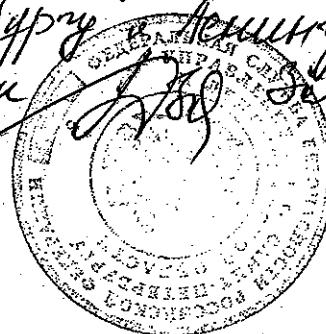
The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE CERTIFICATE OF INCORPORATION OF "FROBISTER INVEST & TRADE LTD.", WAS RECEIVED AND FILED IN THIS OFFICE THE SEVENTH DAY OF NOVEMBER, A.D. 1995.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CORPORATION IS NO LONGER IN EXISTENCE AND GOOD STANDING UNDER THE LAWS OF THE STATE OF DELAWARE HAVING BECOME FORFEITED THE FIFTH DAY OF DECEMBER, A.D. 1998, FOR FAILURE TO OBTAIN AND DESIGNATE A REGISTERED AGENT.

Копия верна:

Справки о государственных регистрациях  
и лицензий на право осуществления предпринимательской деятельности  
гражданами и юридическими лицами  
Санкт-Петербургский Административный суд  
направлены в УФСБ по г. Санкт-Петербургу  
отделу по надзору за исполнением законов  
и соблюдением конституционных прав граждан  
в сфере предпринимательской деятельности



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4568134

2558906 8415

060151951

DATE: 03-06-06

Translation of copy certification:

COPY

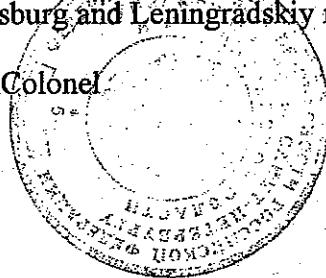
---

The Extract is authentic:

Zavershinskiy D.A.

Chief Investigator for Internal Affairs Department of the  
Investigative Service of BFSS of Russia for  
Saint-Petersburg and Leningradskiy region

Lieutenant Colonel



RESIGNATION OF AGENT

Incorporating Services, Ltd., located at 15 East North Street, City of Dover, County of Kent, State of Delaware, was designated registered agent of FROBISTER INVEST & TRADE LTD. in accordance with the General Corporation Law of the State of Delaware as amended.

In accordance with the provisions of Section 136 of said statute, said Incorporating Services, Ltd. has caused this Certificate of Resignation and the Affidavit below to be prepared and executed by its Executive Vice President this 5th day of November, A.D. 1998, hereby resigning as Registered Agent.

INCORPORATING SERVICES, LTD.

MICHAEL D. McCUSKERMICHAEL D. McCUSKER  
Executive Vice President

STATE OF DELAWARE \*  
\* SS.  
COUNTY OF KENT \*

Michael D. McCusker, being duly sworn deposes and says that he is the Executive Vice President of Incorporating Services, Ltd., a corporation of the State of Delaware, that on May 7, 1998, there was mailed from the office of said Incorporating Services, Ltd., in Dover, Delaware a formal notice to:

FROBISTER INVEST &amp; TRADE LTD.

notifying said corporation, in accordance with the provisions of Section 136 of the General Corporation Law of the State of Delaware, that the said Incorporating Services, Ltd., was resigning as registered agent of the aforesaid corporation in the State of Delaware.

IN WITNESS WHEREOF, said Michael D. McCusker, has executed this affidavit this 5th day of November, A.D. 1998, in order that same may be filed for record with the Secretary of State of the State of Delaware.

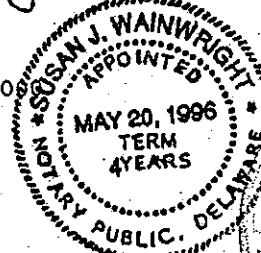
MICHAEL D. McCUSKER

MICHAEL D. McCUSKER

SWORN TO AND SUBSCRIBED BEFORE me the day and year aforesaid.

Susan J. Wainright  
Susan J. Wainright  
Notary Public

My Commission Expires May 20, 2006



Кончалася  
нотариальная полномочия у  
ЮЛ в России по адресу г. Невинномысск  
адреса нотариусов

Заверенность А. А.  
17.03.2006

Translation of copy certification:

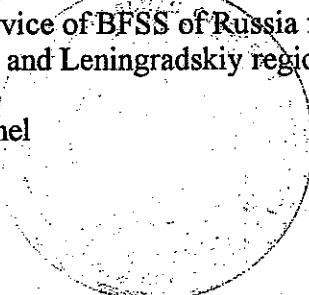
**COPY**

The Extract is authentic:

**Zavershinskiy D.A.**

Chief Investigator for Internal Affairs Department of the  
Investigative Service of BFSS of Russia for  
Saint-Petersburg and Leningradskiy region

Lieutenant Colonel



[Frequently Asked Questions](#) [View Search Results](#) [Summary of Charges](#) [Logout](#)

### Entity Details

<u>File Number:</u>	2558906	<u>Incorporation Date / Formation Date:</u>	11/07/1995 (mm/dd/yyyy)
<u>Entity Name:</u>	FROBISTER INVEST & TRADE LTD.		
<u>Entity Kind:</u>	CORPORATION	<u>Entity Type:</u>	GENERAL
<u>Residency:</u>	DOMESTIC	<u>State:</u>	DE
<u>Status:</u>	FORFEITED		

### TAX INFORMATION

<u>Last Annual Report Filed:</u>	1996		
<u>Annual Tax Assessment:</u>	\$ 0.00	<u>Tax Due:</u>	\$ 122.00
<u>Status:</u>	DELINQUENT	<u>Total Authorized Shares:</u>	1,500

### REGISTERED AGENT INFORMATION

Name: No registered agent on record.

### FILING HISTORY (Last 5 Filings)

<u>Seq</u>	<u>Document Code</u>	<u>Description</u>	<u>No. of pages</u>	<u>Filing Date (mm/dd/yyyy)</u>	<u>Filing Time</u>	<u>Effective Date (mm/dd/yyyy)</u>
1	0136	Agent Resignation w/o Apt	1	11/05/1998	09:00	11/05/1998
2	0102S	Incorp Delaware Stock Co.	2	11/07/1995	09:00	11/07/1995

[Back to Entity Search](#)

To contact a Delaware Online Agent [click here](#).

Конец записи  
Сформировано соглашением no DSD  
Служебной записки УФСБ России  
по Санкт-Петербургу и Ленинградской  
области  
майяковским 18.03.2007  
Д.Н. Зверевский Р.Н.



Translation of copy certification:

COPY

The Extract is authentic:

Zavershinskiy D.A.

Chief Investigator for Internal Affairs Department of the  
Investigative Service of BFSS of Russia for  
Saint-Petersburg and Leningradskiy region

Lieutenant Colonel



PAGE 1



## State of Delaware

SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
P.O. BOX 888  
DOVER, DELAWARE 19903

060151951

9509144

03-06-2006

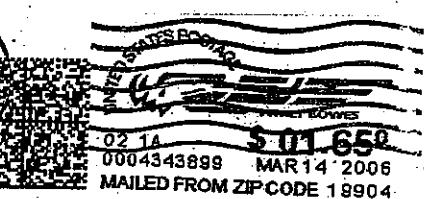
ST. PETERSBURG 191186 RUSSIA

DESCRIPTION	AMOUNT
FROBISTER INVEST & TRADE LTD. 2558906 8320 Certificate of Filing	
Certification Fee	30.00
<b>FILING TOTAL</b>	<b>30.00</b>
FROBISTER INVEST & TRADE LTD. 2558906 8100 Certified Copy	
Certification Fee	30.00
Document Page Fee	2.00
<b>FILING TOTAL</b>	<b>32.00</b>
<b>TOTAL CHARGES</b>	<b>62.00</b>
<b>TOTAL PAYMENTS</b>	<b>62.00</b>
<b>SERVICE REQUEST BALANCE</b>	<b>.00</b>

STATE OF DELAWARE  
DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS  
POST OFFICE BOX 898  
DOVER, DELAWARE 19903  
20-05-01

Business, Penalty For Private Use \$300  
ADDRESS SERVICE REQUESTED

AIR MAIL



D 191186

AIR MAIL

00153/0001

Konus  
Справку о регистрации в РБР  
Сообщество юристов Российской Федерации  
г. Санкт-Петербург в регистрационной  
деле.

Translation of copy certification:

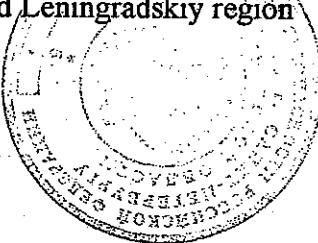
COPY

The Extract is authentic:

Zavershinskiy D.A.

Chief Investigator for Internal Affairs Department of the  
Investigative Service of BFSS of Russia for  
Saint-Petersburg and Leningradskiy region

Lieutenant Colonel



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE LETTER OF REQUEST )  
FROM RUSSIA )  
IN THE MATTER OF ) Misc No. 07-  
FROBISTER INVEST & TRADE, LTD.)

ORDER

Upon application of the United States of America; and upon examination of a letter of request from Russia whose authorities are seeking certain testimony and information from individuals which may be found in this District, for use in a judicial proceeding in Russia and the Court being fully informed in the premises, it is hereby

**ORDERED**, pursuant to Title 28, United States Code, Section 1782, that David L. Hall, Assistant United States Attorney, hereby is appointed as Commissioner of this Court and is hereby directed to execute the letter of request from the Russian authorities as follows:

1. to take such steps as are necessary, including issuance of commissioner's subpoenas to be served on persons within the jurisdiction of this Court, to collect the evidence requested;

2. provide notice with respect to the collection of evidence to those persons identified in the requests as parties to whom notice should be given (and no notice to any other party shall be required);

3. adopt procedures to collect the evidence requested consistent with its use as evidence in a proceeding before a Court in Russia, which procedures may be specified in the request or provided by the Russian authorities;

4. seek such further orders of this Court as may be necessary to execute this request; and

5. certify and submit the evidence collected to the Office of International Affairs, Criminal Division, United States Department of Justice, or as otherwise directed by that office for transmission to the Russian authorities.

IT IS FURTHER ORDERED that, in collecting the evidence requested, the Commissioner may be accompanied by persons whose presence or participation is authorized by the Commissioner.

Dated: This \_\_\_\_\_ day of \_\_\_\_\_, 2007.

---

United States District Court Judge